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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,762	12/26/2001	Takashi Matsuo	217412US0	1658

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EXAMINER

TOOMER, CEPHIA D

ART UNIT

PAPER NUMBER

1714

DATE MAILED: 06/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/025,762

Applicant(s)

MATSUO ET AL.

Examiner

Cephia D. Toomer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 2/27/03.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 5-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-9, 15-19 and 21-26 is/are rejected.
- 7) ☒ Claim(s) 10 and 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 9.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### **DETAILED ACTION**

This Office action is in response to the amendment filed February 27, 2003 in which claims 1-4 were cancelled and claims 5-26 were added.

The rejection of claims 1-4 are withdrawn in view of Applicant canceling claims 1-4.

#### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 5, 15 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The limitations recited in claim 18 already appear in claim 15. In claims 5 and 15, it is not clear if the first aqueous component is an oxidation component. The issue is that the second component is an oxidation component and claims 7 and 17 contain a third oxidizer.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5-9, 15-19 and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bugaut (US 4,470,826).

Bugaut teaches a dye composition (pH 3-11.5) comprising nitro-paraphenylenediamine derivatives as direct dyes (see abstract). This direct dye is present in the composition in an amount from 0.001 to 5% by wt (see col. 3, lines 10-13). The composition contains from 0.5 to 55% of a surfactant, wherein the surfactant may be a mixture of anionic, cationic, non-ionic or amphoteric surfactants (see col. 3, lines 10-19). The composition also contains from 1 to 75% by wt of solvents that are within the scope of the present invention (see col. 4, lines 14-32). Bugaut teaches that the composition contains water (see examples), alkalizing agents (col. 3, lines 53-60 and Examples), oxidizing agents such as urea peroxide, per-salt (includes persulfate salts) and 20 vol. % hydrogen peroxide (col. 5, lines 51-54), and 0.001-5% by weight oxidation dyestuff precursors (see col. 4, lines 46-65; col. 5, lines 29-34). Bugaut teaches that the oxidizing composition may be applied in a stage separate from the composition comprising the alkalizing agent (see col. 5, lines 42-50). Bugaut teaches the limitations of the claims other than the differences that are discussed below.

Bugaut differs from the claims in that he does not specifically teach the amount of oxidizing agent. However, it would have been obvious to one of ordinary skill in the art to have prepared a dye composition containing the claimed amount of oxidizing agent because Bugaut teaches that this result effective variable is added to develop the dye. Thus, the skilled artisan recognizes the amount of oxidizing agent that may be optimized.

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5. Applicant's arguments filed have been fully considered but they are not persuasive.

Applicant argues that the composition of the present invention is based on two separate components, whereas Bugaut is based on a single composition. Applicant argues that the proportions of and the pH of Bugaut are not for the entire composition but for the various ingredients.

Bugaut clearly teaches that there may be two separate compositions. Bugaut teaches that the oxidizing agent may be applied to the hair in a second stage. As shown by the examples, Bugaut teaches that the pH of the composition and the proportions of the components are clearly within the claimed ranges.

Applicant argues that there is no relationship between the oxidizer and the dye composition.

The examiner respectfully disagrees. Bugaut teaches that the dye composition and the oxidizer composition are two separate compositions wherein the oxidizer function as a developer for the dye.

Applicant argues that there is no clear line of distinction drawn between the solvents of Bugaut. Applicant argues Bugaut chooses a solvent solely in terms of aiding in the solubilization of the components that are not water-soluble.

Applicant's claim do not require two solvents, as shown by the proportions of component B. Bugaut teaches that mixtures of the solvents may be employed in his invention and that the solvents fall within the category of Applicant's solvents A and B.

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6. Claims 5-9, 11-19 and 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vidal (US 6,379,397) equivalent of JP 11263790.

Vidal teaches a dye composition comprising a pyrazoloazole oxidation base (see abstract). The medium for the dye composition is, for example 1-40%, water, water/alcohol mixture, or a mixture of water and at least one organic solvent, such as benzyl alcohol or phenoxyethanol (see col. 8, lines 6 2-67; col. 9, lines 1-9). The pH of the dye composition is from 3-12. Preferred basifying agents include ammonia, alkaline carbonates or hydroxides and amine compounds (see col. 9, lines 10-35). The composition may contain from 0.0001 to 10% by wt of at least one coupler such as, phenylenediamines and aminophenols (see col. 9, lines 36-col. 10, lines 1-67). The dye compositions contains surfactants such as, nonionic, cationic and mixtures thereof (see Example 1 wherein polyoxyethylene glycol and C<sub>8</sub>-C<sub>10</sub> alkyl polyglucoside are present) (col. 11, lines 14-18).

The oxidizing agents include hydrogen peroxide and alkali metal persulfates (see Examples and col. 12, lines 21-30). The composition may contain a direct dye (see claim 46). Vidal teaches that the dye composition maybe prepared as multi-components wherein the first component contains the dye composition and the second component contains the oxidizing composition. These components are mixed at the time of use (see col. 12, lines 10-15, 51-56). Vidal teaches the limitations of the claims other than the difference that is discussed below.

Vidal differs from the claims in that he fails to teach the claimed amount of alkali agent (claims 1 and 15). However, it would be reasonable to expect that Vidal teaches

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amounts that are within the claimed range because he teaches a dye composition that is similar to that of the present invention.

7. Claims 10 and 29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 10 and 20 are objected to because the prior art fails to teach or suggest the addition of a C<sub>12</sub>-C<sub>22</sub> linear or branched monohydric alcohol.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

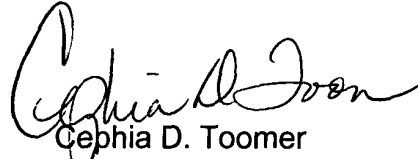
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cephia D. Toomer whose telephone number is 703-308-2509. The examiner can normally be reached on Monday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 703-306-2777. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
Cephia D. Toomer  
Primary Examiner  
Art Unit 1714

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June 4, 2003